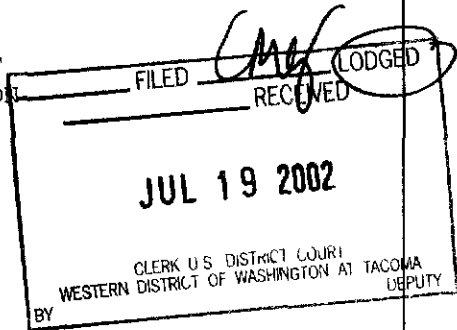


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA



KATHLEEN M. HOUSE,

Plaintiff,

vs.

WASHINGTON STATE DEPARTMENT OF FISH

AND WILDLIFE AND THE STATE OF

WASHINGTON,

Defendant

) Case No. No ~~CV97-5708FDB~~
) **C98-5262 FDB**
) PLAINTIFF'S RESPONSE TO SUMMARY
) JUDGEMENT MOTION

COMES NOW the plaintiff, Kathleen M House, and files this response to the defendant's Motion for Summary Judgment. This response is based on the following facts, points of law and attached supporting documents

STATEMENT OF THE FACTS

Plaintiff was hired as a Computer/Analyst Programmer III in March of 1993, by the Washington State Department of Wildlife. She was hired at a salary in the mid range of for that position due to her excellent qualifications and to the fact that she would not accept the position for less than half of her then wage of \$60,000/year. The Classification Questionnaire under which she was hired required expertise and experience in the programming language SAS and in database design and implementation. Plaintiff exceeded these qualifications many times over.

Plaintiff's supervisor, Tom Owens, exhibited hostility towards



1 plaintiff's expertise in computers from her very first days of employment.
2 He frequently made derogatory remarks concerning plaintiff to the group in
3 which she worked, excluded her from work related meetings and social
4 occasions both during and after work hours, refused to recognize work she had
5 completed, assigned tasks in the languages for which she had been hired and
6 in which she had more expertise than any of her coworkers to males
7 unqualified for such tasks, withheld training, computer equipment, technical
8 access and information that was necessary for her to do her job and that was
9 freely given to plaintiff's male coworkers and denigrated her to coworkers
10 and to other management within the Department of Wildlife. In place of the
11 highly skilled job for which plaintiff had been hired, Tom Owens substituted
12 tasks at a much lower skill level, which had formerly done by employees in
13 such gender-segregated positions as data entry operator and secretary. Such
14 tasks included cleaning up computer libraries for male managers and coworkers
15 and producing documentation of existing computer systems for male coworkers.
16 None of plaintiff's male coworkers, whose skill levels and experience in SAS,
17 SQL and database programming were far less than plaintiff's, were ever asked
18 to perform like tasks for plaintiff. Mr. Owen's hostility towards plaintiff
19 was based on his belief, shared throughout the department of Wildlife, that
20 computer expertise properly belonged to men. Tom Owens, Chris Ringo, Randy
21 Kreuziger, Marvin Young and Dave Caudill, among others, consistently
22 denigrated the expertise of women within the Information Services division, a
23 subordinate division of the predominately female Management Services
24 Division. Tom Owens exhibited special hostility towards plaintiff when she
25 had completed difficult assignments or had solved programming problems Mr.

1 Owens and plaintiff's two male coworkers, Randy Kreuziger and Howard
2 Ferguson, had been unable to solve.

3 When plaintiff sought redress for these wrongs through department
4 channels and according to merit system rules, Penny Cusick, a personnel
5 officer with the department, actively collaborated with Tom Owens in trying
6 to force plaintiff from her job and from the department. Ms. Cusick lied to
7 plaintiff from her very first contact, promising plaintiff confidentiality
8 she immediately breached, and actively collaborated with Tom Owens in
9 creating a hostile and punitive environment for plaintiff. Ms. Cusick, under
10 the guise of a caring mediator who "was there for" plaintiff, attended a
11 first meeting that she had strongly urged upon plaintiff, between plaintiff
12 and Tom Owens, and then lied under oath a year later concerning the nature
13 and substance of this meeting Ms. Cusick continued to attend meetings
14 between Tom Owens and plaintiff, over plaintiff's objections and contrary to
15 Merit System Rules, solely in order to provide perjured collaborative
16 testimony for Mr. Owens. Ms. Cusick, who has since been promoted to manager
17 of her department, continued throughout plaintiff's four years with the
18 agency to actively engage in and encourage retaliation against the plaintiff.

19 Plaintiff sought redress from Department of Wildlife management and
20 according to Merit System Rules beginning in 1994. Tom Owens responded to
21 plaintiff's concerns about her job assignments and lack of necessary computer
22 equipment and training by writing a "special" performance evaluation that
23 consisted chiefly of false statements about plaintiff and attacks on her
24 character and mental health and contained an unjustified warning of
25 disciplinary action. Contrary to Merit System Rules and department policy,
Mr. Owens's supervisors refused plaintiff's request to review this

1 evaluation. In retaliation, Jim Eby assigned plaintiff to the supervisor of
2 a Game biologist, Jim Rieck. With the exception of the male biologist to
3 whom Mr. Owens had transferred many of plaintiff's SAS and data base
4 assignments, Mr. Rieck had no supervisory experience. His lack of computer
5 expertise was known at that time to have caused many problems, such as the
6 publication of invalid animal counts in departmental publications, the
7 necessity of rerunning the 1993 permit drawings due to his having omitted the
8 computer run assigning tag numbers to permits, and causing the failure of
9 plaintiff's first project for regional field personnel due to his erroneous
10 analysis of requirements. These problems were known to Department of
11 Wildlife management personnel, including Dave Brittell and Jim Eby, when
12 plaintiff was assigned to Jim Rieck's supervision. Mr. Rieck was also known
13 to have strongly marked stereotypical views towards women. He frequently
14 referred to women as "bubbly blondes" or "brunettes", made fun of a male
15 employee because he had been hired for data entry and told plaintiff that he
16 thought that women invited the violence done to them by men. Prior to
17 plaintiff's transfer to Mr. Rieck's supervision, however, Mr. Rieck regularly
18 acknowledged the errors he made. He was also initially supportive of
19 plaintiff, acknowledged that plaintiff should have been assigned more SAS
20 and database work and wrote a strongly worded memo to Ms. Cusick's division
21 supporting plaintiff's request for the very minimal requirement of the signed
22 form necessary for her to take classes at a local community college.
23 Following a weekend during which he and Tom Owens helped build Howard
24 Ferguson's house, however, Mr. Rieck reversed himself and withdrew the
25 assignment of the SAS project, a cougar count, that he had given plaintiff

1 the previous Friday. Mr. Rieck continued to make serious errors in data
2 analysis one such example was his mistaken analysis of Cathy Drew's
3 accounting application, which was based on his erroneous assumption of
4 a duplication of data entry functions. Even after this mistake was made
5 clear to him, he insisted that plaintiff divert her time from critical
6 projects within the Game division to develop the accounting application
7 because it was "slow".

8 Plaintiff continued to be forced into gender-stereotyped support roles
9 and into working for gender segregated divisions within the Department of
10 Fish and Wildlife. The two major tasks Jim Rieck gave plaintiff were the
11 above assignment for the predominately female accounting department, and the
12 conversion of obsolete IBM Game libraries to a new operating system, a
13 project under the supervision of the predominately female Management Services
14 division. Chris Ringo's attitude towards plaintiff changed sharply after he
15 ordered her to, and then himself, altered accounting numbers on plaintiff's
16 timesheets to charge time illegally to the Pitmann-Robertson account and
17 plaintiff reported this to the Department of Interior auditor who questioned
18 plaintiff on those expenditures. The fact that plaintiff's private notes and
19 email were made available to him was also probably responsible for the
20 extreme change of attitude towards and willingness to lie about plaintiff
21 shown in his depositions. Among other examples, he endorsed management's
22 account of the way in which training and equipment were requested by and
23 authorized for employees, which he knew to be false, falsely stated in a memo
24 that plaintiff never saw until discovery, that plaintiff had failed to back
25 up her hard drive, falsely stated that working backup software was available

1 to plaintiff at the time her computer crashed and falsely stated that
2 plaintiff had never completed a training request form. He had told plaintiff
3 to do so as part of the usual procedure, which was to direct the employee to
4 fill out a request form after training had been approved by the supervisor.
5 The fact that plaintiff did receive Powerbuilder training close to the end of
6 her employment with the department shows that she did fill out a training
7 request form. Training would not have been authorized without such a request
8 and Chris Ringo knew that. He required last minute changes to the mailing
9 label program and used that in depositions as a reason plaintiff was denied
10 Powerbuiler training and Sybase assignments

11 The only option offered plaintiff after her computer position was
12 eliminated by Dave Brittell, Jim Eby and Penny Cusick was a position in the
13 licensing department selling licenses across the counter and performing data
14 entry. At the time of plaintiff's RIF, the department had hired an outside
15 consultant, who was paid at consultant's rates, to write applications for the
16 Game division in Powerbuilder and Sybase; Tom Owens had hired Jim Rieck to
17 work for him as a programmer. A 1996 Department of Interior audit had listed
18 the lack of accurate tracking of revenue as a serious problem that needed to
19 be corrected; the division's response to that was there were insufficient
20 personnel at that time to develop the new Sybase system. The \$27 million
21 dollar shortfall discovered in 1997 was attributed to the failure to timely
22 implement a revenue tracking database on the Sybase server. Plaintiff had
23 demonstrated her mastery of SAS, Sybase and Unix in the very short time she
24 was allowed Powerbuilder and Sybase access. This was at the time the
25 unskilled position in licensing was alleged to be the only one available to
her. For several years after plaintiff's position was eliminated, and as far

1 as plaintiff knows, up to the present time, the department continued to hire
2 computer consultants, from Sterling Software in Olympia and Professional Data
3 Exchange, in Seattle, among others, to perform duties identical to those of
4 plaintiff's position. These consultants were paid from \$45 to \$85 an hour by
5 their companies; their actual cost to the department was much higher.

6 Plaintiff's supervisors' open retaliation against plaintiff encouraged
7 a hostile environment on the part of plaintiff's coworkers Randy Kreuziger
8 participated in email correspondence, without plaintiff's knowledge, that
9 falsely reported events to plaintiffs supervisors. Plaintiff had no
10 knowledge of this correspondence or the charges Mr. Kreuziger had made
11 against her until this sole piece of email was given to her in discovery.
12 However, Mr Kreuziger's attitude towards plaintiff was evident in his
13 increasingly uncooperative behavior to plaintiff and in his refusals to
14 provide plaintiff with the PC and LAN support that was part of his position
15 duties. Penny Cusick's and Jim Rieck's encouragement of Howard Fergeson's
16 fabrication of incidents concerning plaintiff also created an extremely
17 hostile environment. Both men were given carte blanche to treat plaintiff
18 however they wished In one egregious incident in 1995, Howard Ferguson
19 falsely accused plaintiff of "acting funny", then demanded that she go into a
20 conference room with him. He then proceeded to yell at plaintiff for 15
21 minutes. Plaintiff's supervisor, Jim Rieck, admitted to plaintiff that he
22 had not heard the actual discussion, but still reprimanded plaintiff George
23 Tsukomoto, Jim Rieck's supervisor, refused to review the incident with
24 plaintiff. Penny Cusick admitted in a deposition taken in 1998 that she did
25 not discuss any of Howard Ferguson's accusations with plaintiff, yet she used

1 Mr. Ferguson's fabricated report of an incident alleged to have occurred in
2 1995 as support for Tom Owens's retaliatory 1994 evaluation of plaintiff.
3 She encouraged Mr. Ferguson to keep a secret log of fabricated incidents.
4 Plaintiff's private email and notes were taken from her hard drive after it
5 was removed from her machine in the upgrade she was given in 1996; comments
6 and statements made by Randy Kreuziger and Tom Owens indicate they had been
7 given access to plaintiff's email and notes. One of the most pleasant and
8 cooperative of plaintiff's coworkers, Steve Pozzanghera, was told by
9 plaintiff's supervisor, Jim Rieck, to write up one of the few incidents he
10 was upset by plaintiff. Neither Mr. Pozzanghera nor Mr. Rieck discussed this
11 incident with plaintiff, she was given no chance to explain that Dave Ware
12 and Jim Eby had spent a large part of the preceeding hour at a division pot
13 luck making fun of plaintiff's having to write requests for services given as
14 a matter of course to plaintiff's male coworkers. A careful reading of Mr
15 Pozzanghera's statement would also show how that his perception of
16 plaintiff's behavior was inaccurate changes in facial color and voice are
17 physical signs of stress and cannot be reasonably described as "assault";
18 Mr Ferguson's forcing plaintiff into a small conference and yelling at her
19 for 15 minutes would more accurately be defined this way. In contrast,
20 Plaintiff had no recourse at all when coworkers chose to take out their
21 frustrations on her: exhibits include examples of the way in which
22 plaintiff's complaints to upper management were dismissed.

23 Other retaliatory acts include the reinvestigation of a complaint
24 against a coworker, Dave Caudell, resolved in plaintiff's favor prior to her
25 filing a Title VII complaint naming that coworker. Plaintiff crossed out

1 that section of her complaint specifically because she felt that Steve
2 Penland had done everything he could to resolve her complaint and did not
3 realize that the EEOC would leave the name visible in the copy of the
4 complaint given the department.

5 AUTHORITIES AND POINTS OF LAW

6 Summary judgment is not appropriate where evidence exists that the
7 employer lied. In *Reeves v. Sanderson Plumbing Products* (2000) 530 U.S. 133,
8 120 S.Ct. 2097, 147 L.Ed.2d 105, a unanimous Supreme Court ruled that

9 "Proof that the defendant's explanation is unworthy of credence is
10 simply one form of circumstantial evidence that is probative of
11 intentional discrimination, and it can be quite persuasive. See *id.*, at
12 517. In appropriate circumstances, the trier of fact can reasonably
13 infer from the falsity of the explanation that the employer is
14 dissembling to cover up a discriminatory purpose. See, e.g., *Wright v.*
15 *West*, 505 U.S. 277, 296. Moreover, once the employer's justification
16 has been eliminated, discrimination may well be the most likely
17 alternative explanation, especially since the employer is in the best
18 position to put forth the actual reason for its decision. Cf. *Furnco*
19 *Constr Corp v. Waters*, 438 U.S. 567, 577."

20 Plaintiff's supervisors falsely stated under oath to the Equal Employment
21 Opportunity Commission that plaintiff had received a new computer in October
22 of 1996. After plaintiff was able to prove this false, Mr. Eby changed his
23 statement to plaintiff having received a computer upgrade, and Sandra Turner
24 "lost" the page containing this perjured testimony. Falsified documents were
25 also submitted to the EEOC and to the district court in an attempt to prove a
false statement of the date on which plaintiff received Paradox 5.0. These
are only two example of many false statements existing in the affidavits
supporting defendants' Motion for Summary Judgment in the initial
discrimination case, C97-5708. Plaintiff gave direct evidence of this in her
response to that motion

The principles of collateral estoppel and res judicata do not apply to

1 unreviewed decisions by state administrative agencies in Title VII cases.

2 The Supreme court has held unanimously:

3 "Since it is settled that decisions by the EEOC do not preclude
4 a trial de novo in federal court, it is clear that unreviewed
5 administrative determinations by state agencies also should not
6 preclude such review even if such a decision were to be afforded
 preclusive effect in a State's own courts. [citations omitted]"
 (KREMER v. CHEMICAL CONSTRUCTION CORP., 456 U.S. 461 (1982))

7 The Personnel Appeals Board serves primarily to rubber-stamp
8 employment decisions made by managers within state agencies. It is neither a
9 judicial nor a fact-finding body. Two of the most fundamental principles of
10 law, the rules of evidence and the publication of proceedings, are not used
11 by the board. Plaintiff has attached documents showing that the board does
12 not provide or keep transcripts of its proceedings. Testimony inadmissible
13 in a judicial forum is specifically allowed in Board hearings by
14 WAC 358-30-030 (2), which states in relevant part:

15 The hearing shall be informal. Technical rules of evidence shall
16 not apply to the proceedings, except for the rules of privilege
 recognized by law.

17 In both hearings, the Board gave full evidentiary weight to speculative and
18 hearsay testimony by Penny Cusick. The only testimony concerning the actions
19 of Tom Owens and Howard Ferguson in plaintiff's appeal of the Tom Owens's
20 1994 retaliatory evaluation came from this one source. The same
21 transgression of this most elementary of the rules of evidence occurred
22 throughout the 1998 RIF appeals hearing. Mr. Brittell would not testify to
23 personal knowledge of the memoranda ascribed to him, evidently for fear of
24 perjury. The Board nevertheless accepted as evidence Mr. Brittell's
25 speculations as to what his probable actions would have been. Ms. Cusick's

1 testimony followed this same pattern: plaintiff repeatedly pointed out to
2 the Board during the RIF appeal that Ms. Cusick's testimony was speculative
3 rather than factual, and that she testified to events of which she had no
4 personal knowledge. The Board affirmed during both hearings that speculative
5 and hearsay testimony were acceptable. In addition, the Board simply ignored
6 plaintiff's evidence and the requirements of WAC 358-30-170, which states in
7 relevant part

8 WAC 358-30-170 Burden of proof. At any hearing on appeal from a layoff
9 or reduction in force ... the appointing authority shall have the
 burden of supporting the charges upon which the action was initiated.

10 In addition, bias existed in that the chief hearings examiner, Mr. Jorgensen,
11 had been a member of the union that had refused to provide representation
12 to which plaintiff was entitled. His comments during the hearing show that
13 he was aware of the efforts plaintiff had made to obtain that representation.

14 In addition, the State may not use a RIF to remove a particular
15 employee. See Washington v. Garrett, 10 F 3d. 1421, 1429.

16 "A reduction in force may not be used as a disguise for an adverse
17 action to remove or demote a particular employee...the bureaucratic
18 version of the old shell game, in which the victim ends up with no job
19 because the duties have been slipped under a new shell (position) but
 nothing of substance has changed, may alone be enough to raise an
 inference of improper motivation - at least when combined with other
 circumstances such as those present here"

20 Plaintiff's experience and defendants' own statements show a history of
21 animosity towards plaintiff by agency management.

22 For these reasons, plaintiff respectfully requests that defendants'
23 motion for summary judgment be denied.

24 Dated this 14th day of July, 2002
25


KATHLEEN HOUSE, PRO SE

Statement of Service

I certify that I have served a copy of the attached Request for Extension of Time/Interim Response on defendant's attorney by leaving same at defendant's office at 905 Plum Street, SE, Building 3, Olympia, Washington or by mailing same via first-class mail to 905 Plum Street, SE, Building 3, P.O. Box 40145, Olympia, Washington 98504-0145 on July 19, 2002


Kathleen M. House

ATTACHMENTS

NOT SCANNED